

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1445**

Introduced by Bromm, 23; Baker, 44; Byars, 30; Hudkins, 21;  
Jones, 43; Dw. Pedersen, 39; Robak, 22; Wehrbein, 2;  
Wickersham, 49

Read first time January 20, 2000

Committee: Revenue

A BILL

1 FOR AN ACT relating to railroads; to amend sections 39-2215,  
2 66-489, 66-499, 66-4,105, 66-668, 66-674, 66-677,  
3 66-6,107, 66-6,112, and 74-1320, Reissue Revised Statutes  
4 of Nebraska; to increase fuel taxes to fund railroad  
5 crossing projects; to change the excise tax rate on  
6 railroads transporting freight; to harmonize provisions;  
7 to provide operative dates; and to repeal the original  
8 sections.  
9 Be it enacted by the people of the State of Nebraska,

1               Section 1. Section 39-2215, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3               39-2215. (1) There is hereby created in the state  
4 treasury a special fund to be known as the Highway Trust Fund.

5               (2) All funds credited to the Highway Trust Fund pursuant  
6 to sections 66-4,140, 66-4,147, 66-669, and 66-6,108 shall be  
7 allocated as provided in such sections. The State Treasurer shall  
8 make the ~~transfer to the General Fund~~ transfers required by section  
9 66-499.

10              (3) All other motor vehicle fuel taxes, diesel fuel  
11 taxes, compressed fuel taxes, and alternative fuel taxes related to  
12 highway use retained by the state, all motor vehicle registration  
13 fees retained by the state other than those fees credited to the  
14 State Recreation Road Fund pursuant to section 60-302, and other  
15 highway-user taxes imposed by state law and allocated to the  
16 Highway Trust Fund, except for the proceeds of the sales and use  
17 taxes derived from motor vehicles, trailers, and semitrailers  
18 credited to the fund pursuant to section 77-27,132, are hereby  
19 irrevocably pledged for the terms of the bonds issued prior to  
20 January 1, 1988, to the payment of the principal, interest, and  
21 redemption premium, if any, of such bonds as they mature and become  
22 due at maturity or prior redemption and for any reserves therefor  
23 and shall, as received by the State Treasurer, be deposited in the  
24 fund for such purpose.

25              (4) Of the money in the fund specified in subsection (3)  
26 of this section which is not required for the use specified in such  
27 subsection, (a) an amount equal to three dollars times the number  
28 of motorcycles registered during the previous month shall be placed

1 in the Motorcycle Safety Education Fund, (b) an amount to be  
2 determined annually by the Legislature through the appropriations  
3 process may be transferred to the Motor Fuel Tax Enforcement and  
4 Collection Cash Fund for use as provided in section 66-738 on a  
5 monthly or other less frequent basis as determined by the  
6 appropriation language, (c) an amount to be determined annually by  
7 the Legislature through the appropriations process shall be  
8 transferred to the License Plate Cash Fund as needed to meet the  
9 current obligations associated with the manufacture of license  
10 plates and stickers or tabs provided for in sections 60-311,  
11 60-311.02, and 60-1804, as certified by the Director of Motor  
12 Vehicles, and (d) the remaining money may be used for the purchase  
13 for retirement of the bonds issued prior to January 1, 1988, in the  
14 open market.

15 (5) The State Treasurer shall monthly transfer, from the  
16 proceeds of the sales and use taxes credited to the Highway Trust  
17 Fund and any money remaining in the fund after the requirements of  
18 subsections (2) through (4) of this section are satisfied, (a)  
19 thirty thousand dollars to the Grade Crossing Protection Fund and  
20 (b) the amount calculated pursuant to section 13-1210 for financing  
21 the operating costs of public transportation systems to the Highway  
22 Cash Fund.

23 (6) Except as provided in subsection (7) of this section,  
24 the balance of the Highway Trust Fund shall be allocated  
25 fifty-three and one-third percent, less the amount provided for in  
26 section 39-847.01, to the Department of Roads, twenty-three and  
27 one-third percent, less the amount provided for in section  
28 39-847.01, to the various counties for road purposes, and

1 twenty-three and one-third percent to the various municipalities  
2 for street purposes. If bonds are issued pursuant to subsection  
3 (2) of section 39-2223, the portion allocated to the Department of  
4 Roads shall be credited monthly to the Highway Restoration and  
5 Improvement Bond Fund, and if no bonds are issued pursuant to such  
6 subsection, the portion allocated to the department shall be  
7 credited monthly to the Highway Cash Fund. The portions allocated  
8 to the counties and municipalities shall be credited monthly to the  
9 Highway Allocation Fund and distributed monthly as provided by law.  
10 Vehicles accorded prorated registration pursuant to section  
11 60-305.09 shall not be included in any formula involving motor  
12 vehicle registrations used to determine the allocation and  
13 distribution of state funds for highway purposes to political  
14 subdivisions.

15 (7) If it is determined by December 20 of any year that a  
16 county will receive from its allocation of state-collected highway  
17 revenue and from any funds relinquished to it by municipalities  
18 within its boundaries an amount in such year which is less than  
19 such county received in state-collected highway revenue in calendar  
20 year 1969, based upon the 1976 tax rates for highway-user fuels and  
21 registration fees, the Department of Roads shall notify the State  
22 Treasurer that an amount equal to the sum necessary to provide such  
23 county with funds equal to such county's 1969 highway allocation  
24 for such year shall be transferred to such county from the Highway  
25 Trust Fund. Such makeup funds shall be matched by the county as  
26 provided in sections 39-2501 to 39-2510. The balance remaining in  
27 the fund after such transfer shall then be reallocated as provided  
28 in subsection (6) of this section.

1           (8) The State Treasurer shall disburse the money in the  
2 Highway Trust Fund as directed by resolution of the commission.  
3 All disbursements from the fund shall be made upon warrants drawn  
4 by the Director of Administrative Services. Any money in the fund  
5 available for investment shall be invested by the state investment  
6 officer pursuant to the Nebraska Capital Expansion Act and the  
7 Nebraska State Funds Investment Act and the earnings, if any,  
8 credited to the fund.

9           Sec. 2. Section 66-489, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           66-489. (1) At the time of filing the return required by  
12 section 66-488, such supplier, distributor, wholesaler, or importer  
13 shall, in addition to the tax imposed pursuant to sections  
14 66-4,140, 66-4,142, 66-4,145, and 66-4,146 and in addition to the  
15 other taxes provided for by law, pay a tax of ~~ten and one-half~~  
16 eleven cents per gallon upon all motor vehicle fuel as shown by  
17 such return, except that there shall be no tax on the motor vehicle  
18 fuel reported if (a) the required taxes on the motor vehicle fuel  
19 have been paid, (b) the motor vehicle fuel has been sold to a  
20 licensed exporter exclusively for resale or use in another state,  
21 (c) the motor vehicle fuel has been sold from a Nebraska barge line  
22 terminal, pipeline terminal, or refinery by a licensed supplier to  
23 a licensed distributor, (d) the motor vehicle fuel has been sold by  
24 a licensed distributor or licensed importer to a licensed  
25 distributor or to a licensed wholesaler and the seller acquired  
26 ownership of the motor vehicle fuel directly from a licensed  
27 supplier at or from a refinery, barge, barge line, or pipeline  
28 terminal in this state or was the first importer of such fuel into

1 this state, or (e) as otherwise provided in this section. Such  
2 supplier, distributor, wholesaler, or importer shall remit such tax  
3 to the department.

4 (2) Agricultural ethyl alcohol shall be exempt from the  
5 taxes imposed under this section and sections 66-4,140, 66-4,142,  
6 66-4,145, and 66-4,146 and any other taxes provided for by law  
7 until the agricultural ethyl alcohol is (a) sold to any person who  
8 is not a Nebraska licensed motor vehicle fuels supplier,  
9 distributor, wholesaler, or importer, (b) placed directly into a  
10 motor vehicle, or (c) blended with gasoline. Agricultural ethyl  
11 alcohol that is blended with gasoline shall become subject to the  
12 taxes imposed under this section and sections 66-4,140, 66-4,142,  
13 66-4,145, and 66-4,146 and any other taxes provided for by law at  
14 the same time as the gasoline with which it is blended becomes  
15 subject to such taxes or upon blending if such taxes have already  
16 been paid on the gasoline.

17 (3)(a) Motor vehicle fuel, methanol, and all blending  
18 agents or fuel expanders shall be exempt from the taxes imposed by  
19 this section and sections 66-4,140, 66-4,142, 66-4,145, and  
20 66-4,146, when the fuel is used for buses equipped to carry more  
21 than seven persons for hire and engaged entirely in the  
22 transportation of passengers for hire within municipalities or  
23 within a radius of six miles thereof.

24 (b) The owner or agent of any bus equipped to carry more  
25 than seven persons for hire and engaged entirely in the  
26 transportation of passengers for hire within municipalities, or  
27 within a radius of six miles thereof, in lieu of the excise tax  
28 provided for in this section, shall pay an equalization fee of a

1 sum equal to twice the amount of the registration fee applicable to  
2 such vehicle under the laws of this state. Such equalization fee  
3 shall be paid in the same manner as the registration fee and be  
4 disbursed and allocated as registration fees.

5 (c) Nothing in this section shall be construed as  
6 permitting motor vehicle fuel to be sold tax exempt. The  
7 department shall refund tax paid on motor vehicle fuel used in  
8 buses deemed exempt by this section.

9 Sec. 3. Section 66-499, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 66-499. All sums of money received under sections 66-489  
12 and 66-4,105 by the State Treasurer shall be credited to the  
13 Highway Trust Fund. The State Treasurer shall then transfer (1)  
14 such amounts to the General Fund as the department determines are  
15 equal to the credits and refunds allowed under sections 66-4,118 to  
16 66-4,132 and the amounts required by section 66-4,124 and (2) an  
17 amount equal to one-half cent per gallon of the tax received under  
18 sections 66-489 and 66-4,105 to the Grade Crossing Protection Fund.

19 Sec. 4. Section 66-4,105, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 66-4,105. There is hereby levied and imposed an excise  
22 tax of ~~ten and one-half~~ eleven cents per gallon, increased by the  
23 amounts imposed or determined under sections 66-4,140, 66-4,142,  
24 66-4,145, and 66-4,146, upon the use of all motor vehicle fuel used  
25 in this state and due the State of Nebraska under section 66-489.  
26 Users of motor vehicle fuel subject to taxation under this section  
27 shall be allowed the same exemptions, deductions, and rights of  
28 reimbursement as are authorized and permitted by Chapter 66,

1 article 4. For purposes of this section and section 66-4,106, use  
2 shall mean the purchase or consumption of motor vehicle fuel in  
3 this state.

4 Sec. 5. Section 66-668, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 66-668. (1) In addition to the tax imposed pursuant to  
7 sections 66-4,142, 66-669, and 66-670, there is hereby levied and  
8 imposed an excise tax of ~~ten and one-half~~ eleven cents per gallon  
9 on all diesel fuel as shown by the return required by section  
10 66-675, except that there shall be no tax on the diesel fuel  
11 reported if: (a) The diesel fuel has been indelibly dyed and  
12 chemically marked in accordance with regulations issued by the  
13 Secretary of the Treasury of the United States under 26 U.S.C.  
14 4082; (b) the required taxes on the diesel fuel have been paid; (c)  
15 the diesel fuel has been sold to a licensed exporter exclusively  
16 for use or resale in another state; (d) the diesel fuel has been  
17 sold from a Nebraska barge line terminal, pipeline terminal, or  
18 refinery by a licensed supplier to a licensed distributor; (e) the  
19 diesel fuel has been sold by a licensed distributor or licensed  
20 importer to a licensed distributor or to a licensed wholesaler and  
21 the seller acquired ownership of the diesel fuel directly from a  
22 licensed supplier at or from a refinery, barge, barge line, or  
23 pipeline terminal in this state or was the first importer of such  
24 fuel into this state; or (f) the diesel fuel contains a  
25 concentration of sulphur in excess of five-hundredths percent by  
26 weight or fails to meet a cetane index minimum of forty and has  
27 been indelibly dyed in accordance with regulations promulgated by  
28 the Administrator of the Environmental Protection Agency pursuant



1 to 42 U.S.C. 7545. Suppliers, distributors, wholesalers, or  
2 importers shall remit such tax to the department.

3 (2) Kerosene and other blending agents or fuel expanders  
4 shall be exempt from the taxes imposed under this section and  
5 sections 66-4,142, 66-669, and 66-670 unless and until such  
6 kerosene, blending agents, or fuel expanders are placed directly  
7 into a motor vehicle or blended with diesel fuel. Any kerosene,  
8 blending agent, or fuel expander that is blended with diesel fuel  
9 shall become subject to the taxes imposed under this section and  
10 sections 66-4,142, 66-669, and 66-670 at the same time as the  
11 diesel fuel with which it is blended becomes subject to such taxes  
12 or upon blending if such taxes have already been paid on the diesel  
13 fuel.

14 Sec. 6. Section 66-674, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 66-674. (1) There is hereby levied and imposed an excise  
17 tax of ~~ten and one-half~~ eleven cents per gallon, increased by the  
18 amounts imposed or determined under sections 66-4,142, 66-669, and  
19 66-670, upon the use of all diesel fuel used in this state. Users  
20 of diesel fuel subject to taxation under this section shall be  
21 allowed the same exemptions, deductions, and rights of  
22 reimbursement, other than the commission provided under section  
23 66-678, as are authorized and permitted to suppliers, distributors,  
24 wholesalers, or importers by the Diesel Fuel Tax Act.

25 (2) Every person using diesel fuel subject to taxation on  
26 the use thereof under section 66-673 and this section shall become  
27 licensed and pay the excise tax and file a return concerning the  
28 tax to the department in like manner and form as is required by

1 section 66-675 for suppliers, distributors, wholesalers, or  
2 importers, except that the returns and tax payments required under  
3 this section shall be filed quarterly.

4 (3) For purposes of this section, use shall mean the  
5 consumption of diesel fuel in a motor vehicle registered for  
6 operation upon the highways of this state.

7 Sec. 7. Section 66-677, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 66-677. All taxes, interest, and penalties collected  
10 under the Diesel Fuel Tax Act shall be remitted to the State  
11 Treasurer for credit to the Highway Trust Fund or Highway Cash Fund  
12 as appropriate. The State Treasurer shall then transfer an amount  
13 equal to one-half cent per gallon of the tax received under section  
14 66-674 to the Grade Crossing Protection Fund.

15 Sec. 8. Section 66-6,107, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 66-6,107. In addition to the tax imposed pursuant to  
18 sections 66-4,142, 66-6,108, and 66-6,109, an excise tax of ~~ten and~~  
19 ~~one-half~~ eleven cents per gallon or gallon equivalent is levied and  
20 imposed on all compressed fuel sold for use in registered motor  
21 vehicles.

22 Sec. 9. Section 66-6,112, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 66-6,112. All taxes, interest, and penalties collected  
25 under the Compressed Fuel Tax Act shall be remitted to the State  
26 Treasurer for credit to the Highway Trust Fund or Highway Cash Fund  
27 as appropriate. The State Treasurer shall then transfer an amount  
28 equal to one-half cent per gallon or gallon equivalent of the tax

1 received under section 66-6,107 to the Grade Crossing Protection  
2 Fund.

3           Sec. 10.     Section 74-1320, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           74-1320. (1) There is hereby levied an excise tax on  
6 each railroad transporting freight in the State of Nebraska. Such  
7 tax shall be levied at the rate of ~~seven and one-half~~ fifteen cents  
8 for each train mile operated by such railroad in the state and ~~one~~  
9 two hundred dollars for each public grade crossing on the line of  
10 such railroad in the state. Such tax shall be independent of any  
11 assessment of costs for benefits received by the railroad from  
12 projects for the construction, rehabilitation, relocation, or  
13 modification of railroad grade separation facilities. The  
14 Department of Revenue shall collect the tax due pursuant to this  
15 section from each railroad transporting freight within the state.

16           (2) On each March 1, each such railroad shall submit to  
17 the Department of Revenue a report of its total train miles  
18 operated within the state during the previous January 1 through  
19 December 31 and the number of public grade crossings on its line in  
20 the state at the close of the previous year. All taxes shall be  
21 due on the date of reporting and shall be delinquent if not paid on  
22 a quarterly basis on April 1 and each quarter thereafter.  
23 Delinquent quarterly payments shall draw interest at the rate  
24 provided for in section 45-104.02, as such rate may from time to  
25 time be adjusted.

26           (3) As used in this section, train mile shall mean each  
27 mile traveled by a train in this state regardless of the number of  
28 cars in such train.

1               Sec. 11. Sections 10 and 12 of this act become operative  
2 on January 1, 2001. The other sections of this act become  
3 operative on October 1, 2000.

4               Sec. 12. Original section 74-1320, Reissue Revised  
5 Statutes of Nebraska, is repealed.

6               Sec. 13. Original sections 39-2215, 66-489, 66-499,  
7 66-4,105, 66-668, 66-674, 66-677, 66-6,107, and 66-6,112, Reissue  
8 Revised Statutes of Nebraska, are repealed.